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**U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 258 11011

Office: LOS ANGELES

Date: **APR 22 2008**

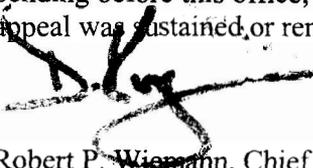
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT: SELF-REPRESENTED

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Los Angeles. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that she entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.

On appeal, the applicant submitted additional evidence and asserted that the application should be approved.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other

relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The applicant submitted the instant Form I-687 application on June 15, 2005. On that form the applicant indicated that she lived (1) at [REDACTED] Pacifica, California, from 1981 to 1983, (2) at [REDACTED] Daly City, California, from 1983 to 1984, (3) at 4 [REDACTED] Drive, Daly City, California, from 1984 to 1984, and (4) at [REDACTED] Los Angeles, California, from 1984 to 1988.

The record contains:

- form affidavits from [REDACTED], and [REDACTED], each notarized on June 5, 2005,
- an affidavit dated July 6, 2006 from [REDACTED]
- an undated letter from [REDACTED]
- a letter from [REDACTED] dated August 3, 2005,
- a letter from [REDACTED] dated August 8, 2006,
- interviewer's notes from the applicant's July 10, 2006 interview.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In his affidavit, [REDACTED] stated that the applicant is his daughter-in-law; [REDACTED] indicated in hers that the applicant is her daughter; and [REDACTED] stated, “. . . we usually see each other and go out for good time,” [sic] apparently indicating that she is a friend of the applicant.

The form affidavits of [REDACTED] and [REDACTED] both state that the affiants personally know that the applicant lived (1) at [REDACTED] Daly City, California, from 1981 to 1983, (2) at [REDACTED], Los Angeles, California, from March 1984 to July 1984, and (3) at [REDACTED], Panorama, California, from 1989 to 1999. This office notes that this residential history has gaps including one that spans from some unstated date July 1984 to an unstated date during 1989.

The residential history provided in the form affidavit of [REDACTED] is nearly identical, but specifies that the applicant lived at [REDACTED] in Daly City from December 1981 to January 1983. The applicant’s address from January 1983, when she moved from Daly City, to March, 1984, when she moved to Los Angeles, was not provided.

This office notes that neither of those residential histories corresponds, even roughly, to the history the applicant provided on the Form I-687. That is; the applicant claims to have lived at [REDACTED] Pacifica, California, from 1981 to 1983, whereas the three affiants state that she lived at [REDACTED], Daly City, California, from 1981 to 1983.

Further, the applicant claims to have lived at [REDACTED] Daly City, California, from an unstated date in 1983 to an unstated date in 1984 and at [REDACTED], Daly City, California, from another unstated date in 1984 to yet another unstated date in 1984. She claims to have subsequently lived at [REDACTED] Los Angeles, California, from another unstated date in 1984 to an unstated date in 1988. Her affiants, on the other hand, state that she lived at [REDACTED], Los Angeles, California, from some date, possibly in March, in 1984 to another date, possibly in July, in 1984.

Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

In his July 6, 2006 affidavit [REDACTED] stated, “I’ve known [the applicant] since 1981 when her mother and her [sic] moved to Pacifica, California,” but offered no other relevant information. His statement is consistent with the applicant’s version of her residential history as provided on the Form I-687, but contrary to the residential histories provided on the affidavits of [REDACTED], and [REDACTED]

The undated letter of [REDACTED] states that he has known the applicant since 1981, having first met her when he visited her and her mother in Pacifica, California; and that he is now married to the applicant's mother, making her his stepdaughter.<sup>1</sup> Mr. [REDACTED] stated that during the 1980's the applicant and her mother lived first in Pacifica, California, then in Daly City, and finally in Los Angeles, California.

[REDACTED] assertion that the applicant lived in Panorama City during 1981 is consistent with the residential history the applicant asserted on her Form I-687 application, but contradicted by the residential history provided on the June 5, 2005 affidavits, including the one provided by Mr. [REDACTED] himself, and certainly does not constitute objective evidence to reconcile the contradiction between those affidavits and the applicant's claimed residential history.

In her letter dated August 3, 2006, [REDACTED] stated that the applicant is her daughter whom she has known since birth. She further stated that they first lived in Pacifica, California and then Daly City, California, Los Angeles, California, and Panorama City, California, in that order. She did not give even approximate dates of the applicant's residence at those locations or provide any other information relevant to her residences in the United States. That order of residences is consistent with the applicant's version of her residential history, as stated on the Form I-687. It is not consistent with the residential history stated on the three June 5, 2005 affidavits, as it states that she first lived in Pacifica, California.

August 8, 2006 letter states that she knows that during 1986, when the Ms. [REDACTED] was 9 years old, she and the applicant played together while their mothers worked. She stated, "As I remember, they were living in the City of Los Angeles, but really close to South Pasadena." She further stated, "As far as I remember, before they resided in Los Angeles some time in 1984-1985, they came from a city near the San Francisco area and I was told that they have been there since 1981.

[REDACTED]'s somewhat abstract residential history, like that of [REDACTED] is consistent with either of the previously submitted, contradictory versions of the applicant's residential history. It does not reconcile the discrepancies between the applicant's claim and the evidence, nor even indicate which of the two competing histories [REDACTED] supports.

According to the interviewer's July 10, 2006 notes the applicant stated that she and her mother left the United States and returned to the Philippines from May 1983 to August 1983, and from August 1987 to August 1988.

With the Form I-687 application the applicant submitted the three June 5, 2005 affidavits. In the Notice of Decision, dated July 15, 2006, the director found that the applicant had failed to demonstrate that she resided continuously in the United States during the requisite period. On appeal, the applicant submitted the July 6, 2006 affidavit of [REDACTED], the undated letter of [REDACTED]

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<sup>1</sup> A language barrier may have resulted in his stating, apparently incorrectly, in his June 5, 2005 affidavit, that the applicant is his daughter-in-law, rather than his stepdaughter.

██████████ and the August 3, 2006 letter of ██████████. The applicant argued that the evidence demonstrates that the application should be approved.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate continuous residence during the requisite period.

Initially, the applicant submitted three affidavits that contradicted her claimed residential history. Informed that the evidence was insufficient, she submitted an affidavit from ██████████ and a letter from her mother that support the residential history on the I-687 and contradict that on the June 5, 2005 affidavits of ██████████ and ██████████.

She also provided containing a residential history from ██████████ contrived to be so abstract that it contradicts neither of the conflicting residential histories. Finally, the applicant provided a letter from her step-father, ██████████ that contradicts all of the June 5, 2005 affidavits, including ██████████'s own previous affidavit, without explanation.

The additional evidence does not reconcile, nor even directly address, the conflict between the applicant's claim of residence and the affidavits from ██████████, and ██████████.

The applicant has not explained how she came to submit three affidavits that contradict her claim of residence in the United States, and certainly not demonstrated where the truth, in fact, lies. This renders all of the evidence in the record insufficiently reliable to support the applicant's claim of eligibility.

Even if the evidence were not so tarnished, however, the record would still tend to show that the applicant had not continuously resided in the United States as required by section 245A(a)(2) of the Act. The applicant is obliged to show that she resided in the United States continuously from January 1, 1982 until the date of filing as defined by 8 C.F.R. § 245a.2(b)(1), which may have been as early as May 5, 1987 or as late as May 4, 1988. This residence may not have been interrupted by a single absence of greater than 45 days, or absences exceeding 180 days in the aggregate.

At her July 10, 2006 interview the applicant stated that she left the United States from May 1983 to August 1983, and from August 1987 to August 1988. Her absence from some unstated date in May 1983 to some unstated date in August 1983 indicates that she was out of the country for a minimum of 62 days during 1983.<sup>2</sup> She may have also been absent for more than nine additional months between departing in August 1987 and filing her initial application, sometime before May 4, 1988.<sup>3</sup>

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<sup>2</sup> If the applicant were absent only from May 31, 1983 to August 1, 1983, she would have been absent for 62 days. Use of any other dates during May and August in the calculation would yield a longer calculated absence.

<sup>3</sup> That is; if the applicant filed her initial application on May 4, 1988, then her absence from August 1987 to August 1988 may have encompassed more than nine months within the qualifying period.

For this additional reason, again, pursuant to section 245A(a)(2) of the Act, the application may not be approved.

Given the paucity of credible supporting documentation, and the applicant's own testimony that she did not reside continuously in the United States during the requisite period within the meaning of the governing regulation, the applicant has failed to demonstrate that she resided continuously in the United States during the requisite period.

The applicant is therefore ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on that basis, which has not been overcome on appeal. In legalization proceedings, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.